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SENATE

{ REPORT  
{ No. 2013

## ALMA COOPERATIVE EQUITY EXCHANGE AND OTHERS

JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H. R. 3211]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3211) for the relief of the Alma Cooperative Equity Exchange, Alma, Nebr., and others, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay to the claimants an amount to be determined by the Secretary of the Army which will compensate them for certain business properties which will be rendered useless by the flooding of an area in the vicinity of the Harland County Dam and Reservoir project.

#### STATEMENT

All of the claimants in this bill have, for a number of years, owned and operated certain business properties such as grain elevators, filling station bulk plants, coal sheds and related buildings, situated along the right-of-way of the Chicago, Burlington & Quincy Railroad near Alma, Nebr.

With the construction of the Harland County Dam and Reservoir project the area in which these properties are located will be flooded. In this connection, the Government has purchased the right-of-way owned by the railroad which will be moved to a new site beyond the flooded area. However, because these claimants occupied the right-of-way under an arrangement with the railroad known as a "tenancy at will," they are unable to be compensated under existing legislation.

The committee feels sure that, absent the construction of the Harlan Dam, these claimants would have continued to occupy these premises to the mutual benefit of themselves and the railroad, and that therefore they should at least be compensated, as is provided in the bill, either for the fair value of the improvements or the cost of moving them.

Based on information in the hands of the committee it is not believed that the aggregate amount authorized to be paid will exceed \$75,000. Precedent for such payments may be found in the recent enactment of H. R. 3616, for the relief of the Pacific Fruit Express Co., as well as a provision in Public Law 203, Eighty-second Congress, first session, as follows:

*Provided further*, That not more than \$200,000 of the funds available for the Garrison Dam and Reservoir project on the Missouri River shall be available to pay to lawful occupants of properties for their improvements which will be rendered useless by the construction of the project, but for which compensation may not be made under existing law because of the occupants' limited right of occupancy.

The facts are fully set forth in House Report 1949, Eighty-second Congress, second session, and need not be reprinted here. There are attached, for the information of the Senate, two letters from the Department of the Army relating to these claims.

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DEPARTMENT OF THE ARMY,  
Washington, D. C., June 26, 1951.

Hon. EMANUEL CELLER,  
Chairman, Committee on the Judiciary,  
House of Representatives.

DEAR MR. CELLER: Reference is made to your request to the Department of the Army for an expression of views with respect to H. R. 3211, Eighty-second Congress, a bill for the relief of the Alma Cooperative Equity Exchange, Alma, Nebr., and others.

The Department of the Army has considered the above-mentioned bill.

The purpose of this bill is to direct the Secretary of the Treasury to pay to the Alma Cooperative Equity Exchange, and others, the fair value of grain elevators (located on the right-of-way of the Chicago, Burlington & Quincy Railroad) which were rendered useless by the United States by reason of the construction of the Harlan County Dam and Reservoir, and for which compensation cannot be made under existing law.

The Alma Cooperative Equity Exchange, Alma, Nebr., and Floyd Snyder, Republican City, Nebr., are the owners of a grain elevator and related improvements. Ernest F. Lueking and Andy Haas, doing business as the Tri-County Oil Co., Republican City, Nebr., are the owners of a bulk oil and gas storage plant. All of these improvements are located on land owned by the Chicago, Burlington & Quincy Railroad Co. Each occupies the land pursuant to a lease from the railroad company. The leases have no fixed term but may be terminated by either party. The leases provide that all buildings and fixtures placed on the leased premises by the lessees shall be removed by them on termination of the lease.

In connection with the construction and operation of the Harlan County Reservoir project, a contract has been entered into between the Government and the railroad company for relocation of the railroad facilities to a new right-of-way outside the project area. The grain elevators and the bulk oil and gas storage plant are situated on the portion of the existing railroad right-of-way to be abandoned by the railroad company. The agreement provides, also, that the railroad company will convey to the Government by quitclaim deed all its right, title and interest in the right-of-way to be abandoned. In a decision dated August 4, 1950, No. B-95443, the Comptroller General of the United States ruled that there is no legal liability on the Government to make payment for the property of a lessee such as those which are the subject of this bill on the ground

that the tenancy, being for an indefinite or uncertain term subject to termination by either party, is one at will.

In the acquisition of real property by the Government there are encountered numerous instances where compensation cannot be made to property owners collaterally or incidentally affected by the Government's land acquisition activities. These instances vary from those which are so indeterminate as to be capricious and wholly without merit to others which involve strong equitable considerations although no legal liability exists.

There are several other cases having facts similar to those present in the instant cases and for which the payment of compensation has been denied by this Department. There will doubtless be many more occasioned by future acquisitions of lands needed for river and harbor and flood control projects as well as for the expanding military program.

In the absence of any legal liability on the part of the United States to compensate those named in the bill, it remains for determination as to whether the equitable considerations involved justify the relief proposed. The Department of the Army believes that this determination is more appropriately a responsibility of the Congress.

In the event favorable consideration is to be given to this measure, it is recommended that in line 10 of section 1 the words "grain elevators" be deleted and there be inserted in their place the word "improvements".

Enactment into law of this measure would involve the expenditure of \$56,500, the sum of the Government's appraisals.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,  
*Secretary of the Army.*

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DEPARTMENT OF THE ARMY,  
Washington, D. C., June 29, 1951.

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CELLER: Reference is made to your request to the Department of the Army for an expression of views with respect to H. R. 2585, Eighty-second Congress, a bill for the relief of the Farmers Cooperative Equity Exchange, Republican City, Nebr.

The Department of the Army has considered the above-mentioned bill.

The purpose of this bill is to direct the Secretary of the Treasury to pay to the Farmers Cooperative Equity Exchange the fair value of a grain elevator (heretofore located on the right-of-way of the Chicago, Burlington & Quincy Railroad) which is being rendered useless by the United States by reason of the construction of the Harlan County Dam and Reservoir, and for which compensation cannot be made under existing law.

The Farmers Cooperative Equity Exchange is the owner of a grain elevator situated on a parcel of land owned by the Chicago, Burlington & Quincy Railroad Co. The cooperative occupies the land pursuant to a lease from the railroad company. The lease has no fixed term but may be terminated by either party. The lease provides that all buildings and fixtures placed on the leased premises by the lessee shall be removed by it on termination of the lease. In connection with the construction and operation of the Harlan County Reservoir project, a contract has been entered into between the Government and the railroad company for relocation of the railroad facilities to a new right-of-way outside the project area. The grain elevator is situated on the portion of the existing railroad right-of-way to be abandoned by the railroad company. The agreement provides, also, that the railroad company will convey to the Government by quitclaim deed all its right, title, and interest in the right-of-way to be abandoned. In a decision dated August 4, 1950, No. B-95443, the Comptroller General of the United States ruled that there is no legal liability on the Government to make payment for the property of a lessee such as the Farmers Cooperative Equity Exchange on the ground that the tenancy, being for an indefinite or uncertain term subject to termination by either party, is one at will.

In the acquisition of real property by the Government there are encountered numerous instances where compensation cannot be made to property owners collaterally or incidentally affected by the Government's land acquisition activities.

These instances vary from those which are so indeterminate as to be capricious and wholly without merit to others which involve strong equitable considerations although no legal liability exists.

There are several other cases having facts similar to those present in the instant case and for which the payment of compensation has been denied by this Department. There will doubtless be many more occasioned by future acquisitions of lands needed for river and harbor and flood-control projects as well as for the expanding military program.

In the absence of any legal liability on the part of the United States to compensate the Farmers Cooperative Equity Exchange, it remains for determination as to whether the equitable considerations involved justify the relief proposed. The Department of the Army believes that this determination is more appropriately a responsibility of the Congress.

Enactment into law of this measure would involve the expenditure of \$17,500, the amount of the Government's appraisal.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr., *Secretary of the Army.*

